IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5012 OF 2006

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri Shrishail Sakhare for the Petitioner.
Shri C.R.Sonawane for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 19, 2007.

P.C.:

1. Heard Advocate for the Petitioner. The Petitioner is the original Plaintiff. The suit filed by the Petitioner was dismissed for default and therefore, he applied for restoration by invoking Rule 9 of Order IX of the Code of Civil Procedure, 1908. By the order impugned in this Writ Petition the said Application has been rejected. The order impugned is an appealable order in view of clause (c) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908. In view of this position, this Writ Petition under Article 227 of the Constitution of India cannot be entertained and the same is rejected. However, it will be open for the Petitioner to prefer an Appeal

before appropriate Court. If the Appeal is preferred by the Petitioner, while considering the question of condonation of delay, the concerned Appellate Court is bound to note the fact that this Writ Petition was filed on 07th July, 2006 in this Court and notice was issued by this Court to the Respondent on 15th January, 2007 and the Writ Petition remained pending till today.

2. All contentions of the parties are kept open.

JUDGE